IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

Bail Appl..No. 3652 of 2007()

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CRIME NO. 212/07 OF THRIKKAKARA POLICE STATION

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PETITIONERS ACCUSED & ANOTHER

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1. RAJESH,AGED 22 YEARS,S/O.KRISHNANKUTTY,
   KANNANKERI,CHITTETHUKARA PO,KAKKANAD.

2. REJIMON, AGED 20 YEARS,S/O.KRISHNANKUTTY
   KANNANKERI,CHITTETHUKARA PO.,KAKKANAD.

BY ADV. SRI.V.E.ABDUL GAFOOR

RESPONDENTS: COMPLAINANT

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STATE OF KERALA REP. BY THE SUB
INSPECTOR OF POLICE STATION IN CR.NO.212/2007
REP.BY THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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B.A.No. 3652 of 2007

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Dated this the 21st day of June, 2007

**O R D E R**

The petitioners are accused in a crime registered, inter alia, under Section 326 I.P.C. The crux of the allegations is that the victim was attacked with a dangerous weapon by the accused persons in furtherance of their common intention. The first accused is named in the F.I.R. Second accused is not named, but stated as a persons identifiable by sight. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are incorrect and false. The real incident did not take place in the manner alleged. There is no prior intention to cause any injury. Even going by the allegations, in the course of the incident, there was only a wordy altercation. In these circumstances it is prayed that powers under Section 438 Cr.P.C. may be invoked in favour of the petitioners.

3. The learned Prosecutor opposes the application. There are no circumstances justifying the invocation of the powers under Section 438 Cr.P.C., submits the Prosecutor.

4. I find merit in the opposition by the learned Prosecutor. No circumstances have been urged before me, which would justify the invocation of the jurisdiction under Section 438 Cr.P.C. There is no contention that the second accused, who is not named in the F.I.R., has subsequently been brought in for any oblique motive. I am satisfied that this is a fit case where the petitioners must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek bail in the regular and ordinary course.

3. This application is accordingly dismissed. I may however hasten to observe that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

**(R. BASANT)**
Judge

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